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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/618,615	07/18/2000	Gary W. Sinde	6573-62441	9299

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BARNES & THORNBURG LLP  
11 SOUTH MERIDIAN  
INDIANAPOLIS, IN 46204

EXAMINER

CHAMPAGNE, DONALD

ART UNIT	PAPER NUMBER
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3622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/618,615

Applicant(s)

SINDE, GARY W.

Examiner

Donald L. Champagne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Prosecution Reopened*

1. A new, non-final, rejection follows in response to the appeal brief filed on 22 November 2006.

### ***Claim Rejections - 35 USC § 102 and 35 USC § 103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6-9, 11-14, 16-19, 21-24, 26-29, 31-34 and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Nickolls et al. (US005251626A).
5. Nickolls et al. teaches (independent claims 1 and 21) a method and apparatus for identifying arrhythmias (abnormal heart rhythms) by monitoring physiological signals (col. 6 lines 5-14) descriptive of heart activity on the human nervous system (col. 9 lines 47-48), which reads on identifying a source of ingress into a network (para. 6 below), including classifying electrocardiogram (ECG) waveforms (col. 5 lines 48-54), which reads on storing frequency spectra of known arrhythmias (col. 7 lines 3-8 and Figs. 7-9), comparing the input ECG spectra with the spectra of known arrhythmias, and determining from the comparison which of the frequency spectra of known arrhythmias is closest to the input ECG spectra (col. 11 lines 28-38 and Figs. 4 and 5, described at col. 12 line 11 to col. 13 line 65).<sup>1</sup>

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<sup>1</sup> MedicineNet.com defines "QRS complex".

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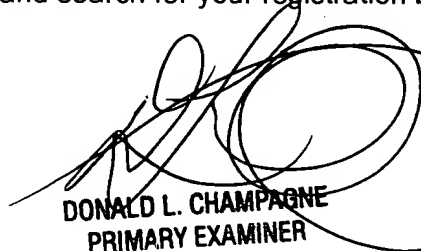
6. Nickolls et al. does not explicitly teach that the heart is the source of arrhythmia signal ingress to the nervous system network. However, under the principles of inherency (MPEP § 2112.02), since the reference invention necessarily performs the method claimed, the method claimed is considered to be anticipated by the reference invention. As evidence tending to show inherency, it is noted that Kullok et al. (US 20040230252A1) teaches that the nervous system is the central network of the human body (para. [0012]) and Peele, III (US005865756A) teaches that the heart is the source external to the nervous system of arrhythmia signals (col. 2 lines 17-20). Wei et al. (US pat. 4,481,191, col. 2 lines 34-36) teaches that the nervous system is "a critical monitoring network". Wei et al. (col. 3 lines 30-37), Stroetmann et al. (US005578061A, col. 2 lines 51-60) and Wirth et al. (US006414030B1, col. 2 lines 25-28, col. 13 lines 48-53 and col. 13 line 67 to col. 14 line 7) teach that the nervous system can act on the heart.
7. Nickolls et al. also teaches analog, digital and hybrid analog-digital networks (col. 6 lines 22-23 and col. 11 lines 3-4) and optimization by use of a back propagation neural network (col. 5 lines 48-49).
8. Claims 5, 10, 15, 20, 25, 30, 35 and 40 are rejected under 35 U.S.C. 103(a) as being obvious over Nickolls et al. in view of Eberhart et al. (US006516309B1). Nickolls et al. does not teach a particle swarm optimizer. Eberhart et al. teaches a particle swarm optimizer (PSO, Abstract and col. 2 line 47 to col. 3 line 10). Because Eberhart et al. teaches that PSO can improve the efficiency of diagnostic neural networks (col. 1 line 64 to col. 2 line 7), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Eberhart et al. to those of Nickolls et al.

### **Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L. Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 9:30 AM to 8 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.

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10. The examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for all *formal* fax communications is 571-273-8300.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
12. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

  
DONALD L. CHAMPAGNE  
PRIMARY EXAMINER

Donald L. Champagne  
Primary Examiner  
Art Unit 3622

3 March 2007